

Memorandum



Date: May 4, 2016

Agenda Item No. 2(B)5
May 17, 2016

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over the "To:" and "From:" lines.

Subject: Revised Report Regarding Recycling at County-Owned Facilities

This report is being provided to the Board of County Commissioners (Board) pursuant to Ordinance No. 14-65 in response to Resolution No. R-878-15, which was adopted by the Board on October 6, 2015 and directed the Administration to provide a report detailing the following:

- The performance of Ecological Paper Recycling, Inc. (Ecological) under the County's recycling contract, *Contract No. RFQ841*, and the steps taken by the Administration to enforce the provisions of the contract;
- The current state of recycling at all County facilities and the current status of any potential replacement contract to provide recycling services;
- An update on the compliance of cleaning services vendors with the contractual provisions requiring the proper collection of recycled materials; and
- Recommendations for Board action to improve recycling at County facilities.

Resolution No. R-878-15 further directed the Administration to develop contingency plans to ensure the continuation of recycling services at County facilities in the absence of a recycling vendor or in instances of vendor non-performance, and to develop training and education programs for County employees on recyclable goods and the benefits to recycling.

Status of County's Relationship with Ecological Paper Recycling, Inc.

On October 1, 2013, the County awarded *Contract No. RFQ841, County Facilities Recycling Program*, to a local firm, Ecological, through Resolution No. R-805-13. The contract provided for collection of recycled materials at 473 County facilities, training services for County staff regarding recycling procedures, and the submission of monthly performance reports. Early in 2014, the Department of Regulatory and Economic Resources, in its role as Project Manager for this contract, reported a number of performance issues with Ecological. These included, but are not limited to, failure to comply with the following contractual requirements:

- Maintaining compliance with all applicable federal, state, and local regulations;
- Maintaining all service vehicles and equipment in good repair and in clean, sanitary, and safe condition;
- Maintaining required insurance throughout the contract term;
- Submitting monthly status reports regarding progress;
- Providing contractually required rebates owed to the County;
- Maintaining scheduled pickups for all departments, and providing daily recycling route sheets confirming signature by the driver and company officer;
- Providing training schedules for departments and completing training for County staff; and
- Finalizing security clearance for PortMiami and the Miami Dade Aviation Department, and securing identification cards for the Miami Dade Water and Sewer and Miami Dade Aviation departments, and PortMiami locations.

Internal Services Department staff initiated numerous performance review meetings with the vendor's owners to address these performance deficits. In May 2014, these meetings culminated in the placement of Ecological on a Corrective Action Plan. Ecological's performance began to improve. However, in October 2014, following a recurrence of the same types of performance issues, another non-performance meeting was held with the company principal. At this meeting, Ecological committed to securing additional resources to improve its performance. The vendor again failed to sustain the level of service required in order to comply with the contract requirements.

Due to continued and escalating difficulties in its performance, on July 20, 2015, the County terminated all remaining sites covered under the contract. A debarment action was filed against the vendor and its principals in accordance with Section 10-38 of the Code of Miami-Dade County. On July 28, 2015, the County became aware that Ecological had filed for relief under Chapter 11 of the U.S. Federal Bankruptcy Code. On July 31, 2015, the County filed a claim for damages in the amount of \$2,613,394.95 against Ecological's Chapter 11 bankruptcy estate as a result of Ecological's failure to perform under the recycling contract. This was a partial claim that resulted from the re-procurement charges in regard to the Parks, Recreation and Open Spaces Department, Aviation Department, and Leadership in Energy and Environmental Design (LEED)-certified facilities. In its claim filing, the County reserved its contractual right to increase the amount of damages upon award of the recycling contract for the remaining County facilities. In September 2015, the United States Bankruptcy Court allowed the County's claim as a general unsecured claim in the reduced amount of \$1,200,000. In October 2015, Ecological's bankruptcy estate confirmed a Chapter 11 liquidation plan that resulted in a 45 percent recovery for creditors holding allowed unsecured claims which represents \$540,000 for the County.

The County agreed to settle its claim on terms that granted it an allowed unsecured claim. As part of the negotiated settlement, Ecological agreed to its own permanent debarment and the permanent debarment of its principals, investors, affiliates, officers, directors, employees, accountants and representatives, as well as any entity operating under the control of any of the forgoing parties. In addition, Ecological and the County granted mutual releases from all claims arising from the recycling contract and a separate waste collection contract. To date, the County has received one (1) payment from the Ecological bankruptcy estate in the amount of \$480,000.00, and is scheduled to receive the remaining funds due in accordance with the payment schedule approved by the Court.

Status of Recycling Contracts and Activities at County Facilities

In January 2015, prior to terminating all sites under *Contract No. RFQ841*, staff from the Internal Services Department conducted a survey of all County departments to identify those that would encounter the most operational disruptions should recycling services be interrupted or discontinued. The Parks, Recreation and Open Spaces and Aviation departments were identified as the most critical in regard to operational impacts. Additionally, recycling services had to be secured to comply with the LEED certification requirements of six (6) County-owned buildings. New contracts were put into place to support the critical needs for this service.

A competitively established contract awarded by Broward County, *Contract No. F1261301B1*, was accessed to provide services for the Parks, Recreation and Open Spaces Department. A competitive contract was awarded (*Contract No. FB-00186*) to support the Aviation Department's operations. To ensure compliance with the LEED certification of the six (6) County-owned buildings, the County expanded its access of the Broward County contract. Accessing the contract for the remaining County buildings was not possible, as it would have exceeded the contract's scope of services.

The Regulatory and Economic Resources department collected the recycling requirements of all 25 departments for a new solicitation to obtain services at all County facilities. The new solicitation was issued October 2, 2015 under full and open competition and closed on October 30, 2015. The solicitation is now under the Cone of Silence.

Initiatives to Improve Recycling

The County's janitorial services contract requires the cleaning service staff to properly handle the segregation of recycled materials. Building Managers reinforce this requirement during their periodic meetings with the applicable vendors. In anticipation of the new recycling contract, the County's Resource Conservation Committee, which was established under Resolution No. R-374-03, has prepared training material to educate all County employees about recycling at County facilities. In addition to training efforts, the County can improve recycling participation rates at County facilities by implementing several best practices, such as clearly and consistently labeling bins as either "trash" or "recycling" to minimize confusion, and, now that there is single-streamed recycling, eliminating bins carrying specific labels such as "newspaper only" or "cans only."

These changes, which will be communicated and coordinated by the County's Resource Conservation Committee, can be made cost-effectively by removing or relabeling existing recycling bins and trash cans with new consistent stickers, and adding clear signage for what can and cannot be recycled.

With the forthcoming recycling contract, the County will have the ability to measure and track the success of the recycling program. With the implementation of these changes and the Resource and Conservation Committee's continual educational efforts, it is anticipated that the County will achieve higher recycling participation rates.

Should you have any questions or concerns, please do not hesitate to contact Tara C. Smith, Director, Internal Services Department.

c: Abigail Price-Williams, County Attorney
Office of the Mayor Senior Staff
Tara C. Smith, Director, Internal Services Department
Lourdes Gomez, Deputy Director, Department of Regulatory and Economic Resources
Miriam Singer, Senior Assistant Director, Internal Services Department
James F. Murley, Chief Resilience Officer, Department of Regulatory and Economic Resources
Eugene Love, Agenda Coordinator